

DOCKET FILE CCP/CP/15

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCG MAIL ROOM

Nov 5 9 56 AM '05

In the matter of )  
)  
Amendment of Section 73.202(b), )  
FM Table of Allotments, )  
FM Broadcast Stations. )  
)  
(Bertram, Texas) ) MB Docket No. 04-407  
) RM-11106  
)  
(Hawley, Texas) ) MB Docket No. 04-408  
) RM-11107  
)  
(Port Norris, New Jersey) ) MB Docket No. 04-409  
) RM- 11108  
)  
(Woodson, Texas) ) MB Docket No. 04-410  
) RM- 11109

## NOTICE OF PROPOSED RULEMAKING

Adopted: November 3, 2004

Released: November 5, 2004

Comments Date: December 27, 2004

Reply Comment Date: January 11, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each proposal involves a new allotment to the community of license. Each petitioner states that it will file an application for construction and participate at auction if granted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rulemaking number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions by avoiding duplicative actions. We request comments and/or counterproposals for the following proposals:

**A. MB Docket No. 04-407; RM-11106**

**Petitioner:** Charles Crawford  
4553 Bordeaux Avenue  
Dallas, Texas 75205

**Proposal:** Allot Channel 284A at Bertram, Texas, as the community's first local aural transmission service.

**Channel**

**Community**  
Bertram, Texas

**Present**  
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**Proposed**  
284A

Coordinates: 30-50-26 NL and 98-05-45 WL

**Additional Information:** Channel 284A can be allotted at Bertram with a site restriction of 11.7 kilometers (7.2 miles) north of the community.<sup>1</sup> Charles Crawford states that Bertram is a community for allotment purposes. It is an incorporated city with a 2000 U.S. Census population of 1,222 persons. It has its own post office and zip code, and it has city offices, police and fire departments, and water, sewer and waste removal services. It has a Chamber of Commerce, numerous businesses, and churches.

**FCC Contact:** Victoria McCauley (202) 418-2180.

**B. MB Docket No. 04-408; RM-11107**

**Petitioner:** Charles Crawford  
4553 Bordeaux Avenue  
Dallas, Texas 75205

**Proposal:** Allot Channel 269A at Hawley, Texas, as the community's first local aural transmission service and modify the site for vacant Channel 270C1 at Munday, Texas.<sup>2</sup>

**Channel**

**Community**  
Hawley, Texas

**Present**  
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**Proposed**  
269A

Coordinates: Hawley: 32-32-30 NL and 99-45-00 WL  
Munday: 33-44-53 NL and 99-42-14 WL

**Additional Information:** Channel 269A can be allotted at Hawley at a site 9.8 kilometers (6.1

<sup>1</sup> The proposed Bertram allotment is short-spaced to the license site of Station KXXS(FM), Channel 285C2, Marble Falls, Texas. However, there is no conflict in this instance because Station KXXS(FM)'s license was modified to specify operation on Channel 285A at Dripping, Texas, in lieu of Channel 285C2 at Marble Falls in MB Docket No. 03-195. See 18 FCC Rcd 24702 (2003). As such, Amigo Radio, Ltd, licensee of Station KXXS(FM), filed a minor change application implementing this change (File No. BPH-20040113AAZ).

<sup>2</sup> Hawley is incorporated and has a population of 646 persons, according to the 2000 U.S. Census. It has a mayor, independent school district, city offices, volunteer fire department, post office, churches, and numerous local businesses.

miles) southeast of the community.

**FCC Contact:** Victoria McCauley (202) 418-2180.

**C. MB Docket No. 04-409; RM-11108**

**Petitioner:** Dana Puopolo  
2134 Oak Street, Unit C  
Santa Monica, California 90405

**Proposal:** Allot Channel 299A at Port Norris, New Jersey, as the community's first local aural transmission service.<sup>3</sup>

**Channel**

**Community**  
Port Norris, New Jersey

**Present**  
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**Proposed**  
299A

Coordinates: 39-14-47 NL and 75-02-04 WL.

**Additional Information:** Channel 299A may be allotted at Port Norris without a site restriction.

**FCC Contact:** Victoria McCauley (202) 418-2180.

**D. MB Docket No. 04-410; RM-11109**

**Petitioner:** Charles Crawford  
4553 Bordeaux Avenue  
Dallas, Texas 75205

**Proposal:** Allot Channel 298A at Woodson, Texas, as the community's first local aural transmission service.<sup>4</sup>

**Channel**

**Community**  
Woodson, Texas

**Present**  
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**Proposed**  
298A

Coordinates: 33-00-53 NL and 99-03-14 WL

**Additional Information:** Channel 298A can be allotted at Woodson without a site restriction.<sup>5</sup>

<sup>3</sup> Port Norris is a Census Designated Place with a 2000 U.S. Census population of 1507 persons.

<sup>4</sup> Woodson is an incorporated community with a 2000 U.S. Census population of 296 persons. It has its own post office, fire department, public school system, public library, city hall and churches.

<sup>5</sup> The proposed Woodson allotment conflicts with a counterproposal to allot Channel 298C2 to Seymour, Texas, in MM Docket No. 00-148, which was dismissed by *Report and Order*. See *Quanah, TX et al.*, 18 FCC Rcd 9495 (MB 2003). An Application for Review of the *Memorandum Opinion and Order* issued in MM Docket No. 00-148 was filed on June 21, 2004, which excluded the dismissed allotment of Channel 298C2 at Seymour, TX. See *Quanah, TX et al.*, 19 FCC Rcd 7159 (MB 2003). As such, we accept the proposed Woodson allotment as a contingent rulemaking proposal. However, we caution parties that this proposal will be granted subject to the outcome of MM (continued....)

**FCC Contact:** Victoria McCauley (202) 418-2180

3. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 27, 2004, and reply comments on or before January 11, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as listed above for each docket.

4. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>6</sup> This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an

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Docket No. 00-148, since this proceeding is effective but not final. *See Auburn, Alabama, et al.*, 18 FCC Rcd 10333 (MB 2003).

<sup>6</sup> *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (February 9, 1981).

*ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau**

**Attachment: Appendix**

## APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.